IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Contempt petition no. 28 of 2007

Maria Ignatius Parmar ..Petitioner

vs.

1. Slum Rehabilitation Authority
and another ..Respondents

Mr.P.M.Havnur for petitioner.
Mr.G.D.Utangale i/b M/s Utangale and Co. for respondents no.1
Mr.Menon for respondent no.2.

CORAM: S.C.DHARMADHIKARI J
26th September,2007

P.C.

1. After this contempt petition was argued at length and affidavits have been filed, orders were passed on 30th August, 2007 and 3rd September, 2007 with regard to the tenements which are found to be vacant and unallotted.

2. However, the Inspecting Officer of the first respondent has filed a report stating therein that there are no tenements which are either vacant or unallotted or unoccupied.

3. In these circumstances, it was brought to my notice by the petitioner and the Counsel appearing for respondent no.2 that the tenement admeasuring

225 sq.ft (carpet) on 6th floor of building is lying unused and unoccupied. The affidavit filed by one Nitin P.Kale on behalf of the first respondent on 21st August, 2007 reads thus:

> "...I say that the committee members of the Shivnery SRA Cooperative Housing Society Ltd. has informed us that they have already issued their NOC to the SRA for allotment of the Balwadi Centre, which is admeasuring 225 sq.ft. carpet on 6th floor of the building and lying unused and unoccupied which can be allotted to the petitioner in view of the peculiar circumstances since she has became eligible in the scheme much after completion of the project....."
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> 2. I say that in view of the aforesaid circumstances I say and submit that this respondent shall consider the application whether to permit the Society and Developer to allot the said tenement of Balwadi to the petitioner. In any case, I say that this Hon'ble Court may pass the necessary orders for allotment said tenement of Balwadi to be allotted to the petitioner."

4. The parties, therefore, directed to take instructions and make appropriate statement. Mr.Havnur appearing for the petitioner,Mr.Utangale appearing for SRA and Mr.Menon for respondent no.2 agreed that in the peculiar facts of this case and since the petitioner is otherwise eligible and entitled to the tenement admeasuring 225 sq.ft. interest of justice would be subserved if the unused and vacant tenement on 6th floor is allotted to the petitioner. In the affidavit it is confirmed that the said tenement was earmarked as "for the use of balwadi" and the committee members of Shivnery SRA Cooperative Housing Society have informed the SRA and have issued NOC stating that they have no objection if the tenement is allotted to the petitioner or put to use as suggested by SRA. The developer has also confirmed that the said tenement is admeasuring 225 sq.ft.and presently lying unused and vacant. The SRA has agreed that in the peculiar facts and circumstances of the present case, it would consider the request of the developer and the petitioner and allot the tenement which was earmarked for use as Balwadi to the petitioner. The petitioner and the developer to exchange necessary documents within a period of two weeks from today and within a period of four

weeks from today the tenement shall be allotted to the petitioner.

5. Mr.Utangale submits that this order may not be treated as precedent in similar other cases or similar request may be made to the Court or to SRA in future. I do not think that this apprehension is well founded in as much as rules and regulations specifically provide for balwadi in every SRA project and it is not as if that if the request is made the Court or the Authority is obliged to grant the same. Therefore, allotment of balwadi premises to the petitioner for residential use is an exception and made in the peculiar facts and circumstances of this case so as to comply with the order passed by this Court. Therefore, needless to clarify that it shall not be treated as precedent in future.

6. Since this is a contempt petition and parties have come forward with this arrangement during the course of hearing of the same so also the developer agreeing to allot the balwadi tenement, needless to state that the developer will not be entitled to any benefit in view of surrender of Balwadi to the petitioner and SRA for allotment. The petitioner

would be given the same for residential use and that is as per the request of the developer himself. In such circumstances, respondent no.2 shall not be entitled to any benefit by surrender of the said tenement.

7. It is only because in the light of this statement made by respondent no.2 that I had called upon the parties to find out whether the tenement is vacant and can be allotted. The report confirms this fact. In the light of the fact that the developer agreed to this arrangement and tendered unconditional apology that no action in contempt is taken against the developer. SRA is directed to ensure that the developer in this case will not commit any breach of the rules and regulations in the pending project.

8. Further, in the light of NOC of the society and its agreement to allot the tenement to the petitioner, needless to state that in the peculiar facts of this case, in the subject project the society will not claim any tenement for the use as Balwadi.

9. The contempt petition stands disposed of in the above terms.

10. All concerned to act on authenticated copy of this order.

(S.C.DHARMADHIKARI J.)